

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs May 14, 2008

STATE OF TENNESSEE v. DENNIS EDDINS

Appeal from the Circuit Court for Lincoln County

No. S0600123 Jerry Scott, Senior Judge

No. M2007-01753-CCA-R3-CD - Filed September 30, 2008

A Lincoln County jury convicted the defendant, Dennis Eddins, of one count of extortion and one count of harassment. The trial court merged the convictions and sentenced the defendant to two years in the Department of Correction as a Range I, standard offender. On appeal, the defendant argues that the evidence was insufficient to sustain his extortion conviction and that the trial court erred by failing to investigate or otherwise remedy the defendant's allegation of juror misconduct. The state contends that because the order denying the defendant's motion for new trial does not appear in the record, this appeal should be dismissed for lack of jurisdiction. After reviewing the record, we conclude that we are without jurisdiction to consider this appeal. Accordingly, the appeal is dismissed.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. MCLIN, JJ., joined.

Karla D. Ogle, Fayetteville, Tennessee, for the appellant, Dennis Eddins.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Charles F. Crawford, District Attorney General; Hollyn Hewgley and Melissa Thomas, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

The record reflects that the judgments associated with this case were entered on April 13, 2007. On May 11, 2007, the defendant filed a motion for new trial. The "Notice" section on the motion indicates that "this Motion is expected to be heard on the 18th day of June, 2007 at 9:00 a.m. or as soon thereafter as Counsel may be heard." However, no order denying the new trial motion appears in the record, and the record does not contain a transcript purporting to be from the hearing on the motion. On June 28, 2007, the defendant filed a notice of appeal, which lists June 18, 2007, as the date on which the final judgment in this case was entered.

In his brief, the defendant made no mention of the order's absence from the record. In the state's brief, which was filed with the appellate court clerk on March 3, 2008, the state noted that the order denying the motion for new trial was absent from the record. The state argued that because no such order appeared in the record, this court should dismiss the defendant's appeal for lack of jurisdiction. In the six months since the state's brief put the defendant on notice regarding the deficiency in the record, the defendant has not addressed the deficiency via any filing with this court and has made no attempt to supplement the record on appeal.

ANALYSIS

The Tennessee Rules of Appellate Procedure require this court to determine whether it has jurisdiction in every case on appeal. Tenn. R. App. P. 13(b). In criminal cases, an appeal as of right lies from a final judgment of conviction. Tenn. R. App. P. 3(b). The appeal is initiated by filing a notice of appeal within thirty days of the final judgment date. Tenn. R. App. P. 4(a). In criminal actions, "if a timely motion or petition under the Tennessee Rules of Criminal Procedure is filed in the trial court by the defendant . . . under Rule 33(a) for a new trial, . . . the time for appeal for all parties shall run from entry of the order denying a new trial" Tenn. R. App. P. 4(c). Until the trial court denies the motion for a new trial, this court does not have jurisdiction over the case. See, e.g., State v. Doris Nell Jones, No. M2007-00791-CCA-R3-CD, 2008 WL 544576, at **1-2 (Tenn. Crim. App. Feb. 27, 2008); reh'g denied (Tenn. Crim. App. Apr. 8, 2008); perm. app. filed (Tenn. June 9, 2008); State v. James Lee Foreman, II, M2002-02595-CCA-R3-CD, 2004 WL 404696, at *2 (Tenn. Crim. App. Mar. 24, 2004). Furthermore, our interpretation of Rules 24 and 25 of the Tennessee Rules of Appellate Procedure requires that an appellant ensure that the appellate record contains all documents necessary for the disposition of an appeal on its merits. See Doris Nell Jones, 2008 WL 544576, at *1.

In light of the above analysis, we conclude that because the order denying the defendant's motion for new trial is absent from the record, we are without jurisdiction to consider the defendant's appeal. Therefore, we dismiss the appeal.

CONCLUSION

Upon consideration of the foregoing and the record as a whole, the defendant's appeal is dismissed.

D. KELLY THOMAS, JR., JUDGE